
In Re the Arbitration between:

BMS File # 06-PA-0769

Metro Transit,

Employer,

and

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

Amalgamated Transit Union, Local 1005,
Union.

Pursuant to **Article** 13 of the collective bargaining agreement effective August 1, 2000 through July 31, 2003, the parties have brought the above captioned matter to arbitration.

James A. Lundberg was selected as the neutral arbitrator from a Minnesota Bureau of Mediation Services list of Arbitrators.

The parties stipulated that all steps of the grievance procedure were properly complied with and the grievance is properly before the Arbitrator for a final and binding determination.

The grievance was filed January 3, 2006.

A hearing was conducted on May 24, 2006 and the record was closed following oral argument.

APPEARANCES:

FOR THE EMPLOYER

Andrew D. Parker
Parker Rosen
133 First Avenue North
Minneapolis, MN 55410

FOR THE UNION

Roger A. Jensen
Jensen, Bell, Converse & Erickson
1500 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101

ISSUE:

Whether the Employer had just cause to discharge the Grievant, Jamie Reeves?

If not, what is the appropriate remedy?

FACTUAL BACKGROUND:

Grievant, Jamie Reeves, was employed as a Bus Operator by Metro Transit, which serves the Minneapolis-St. Paul, Minnesota Metropolitan Area. Mr. Reeves was a member of Amalgamated Transit Union, Local 1005, which is the bargaining representative for Bus Operators. Mr. Reeves was hired and began training as a Metro Transit Bus Operator in March of 1997.

Mr. Reeves was discharged by notice dated December 21, 2005. The reasons for discharge were:

- Violation of the Final Record of Warning written for accidents. See SSR 95475, dated 12/09/05 where the operator made contact with a parked car as he was pulling into a bus stop
- Overall record

According to the Company's "Safety Discipline Guidelines", a Bus Operator who is responsible for an accident is to be disciplined as follows:

1st Responsible Accident – Safety conference and day of administrative leave; minimum of 2 hours of in-service with instructor; submit a covenant to the garage manager at the end of the day

2nd Responsible Accident – Record of warning and a suspension of 1-3 days; each day of suspension results in 14 days of overtime suspension

3rd Responsible Accident – Final record of Warning and a 3-5 day suspension

4th Responsible Accident – Discharge

The Grievant was on notice of the disciplinary policy.

Between July 29, 2003 and December 9, 2005 the Grievant was responsible for four driving accidents. All of the steps of the progressive discipline process were followed. In fact, the Company could have discharged the Grievant after the third accident in the two and one half year period, as Grievant was responsible for a prior accident, but declined to do so.

On July 29, 2003 the Grievant drove his bus too close to a bus he was trailing and collided with the bus in front of him. The back tail light on the bus in front of Grievant's bus was damaged. The Grievant was required to take a "Safety Keys" class and was given a Warning. .

On November 5, 2003 the Grievant stopped his bus at a STOP sign and noticed a car coming from the right. The car was traveling very slowly and stopped despite not having a STOP sign. Grievant drove into the intersection and collided with the car that had approached from the right. Grievant was given one-on-one instruction and received a Final Record of Warning for the accident and a three-day suspension.

On February 3, 2004 the Grievant hit a patch of black ice in his bus and fish-tailed into a snow bank. While backing out of the snow bank, Grievant backed into a truck. The Grievant was on a Final Record of Warning but the Employer determined that he should have another chance. He was retrained and suspended for five days.

On December 9, 2005 the Grievant hit a stopped vehicle while pulling into the curb at a bus stop. Upon determination that the Grievant was responsible for the accident, he was discharged.

In addition to the four accidents within two and one half years, which formed the basis of the discharge, the Grievant had other disciplinary problems. The Employer relied upon the four accidents between July 29, 2003 and December 9, 2005 but did point out that the four accidents were not his only accidents during his tenure with the Company. Mr. Reeves was also terminated on one other occasion for “Conduct Unbecoming a Bus Operator.” During the grievance process, the Company, the Union and the Grievant entered into a Last Chance Agreement that allowed Mr. Reeves to return to work.

SUMMARY OF EMPLOYER’S POSITION:

The Employer argues that Bus Operators are professional drivers and must be held to the standard of a professional driver. The most important underlying principle in this grievance is public safety. Metro Transit provides mass public transportation to the entire Minneapolis-St. Paul Metropolitan area. Not only must the provider of mass public transportation provide reliable transportation to the public but the public must view the system as safe. If the public learns that Metro Transit drivers do not have good safety records, they will not use the transit system.

The Grievant had the worst driving record of any Bus Operator employed by Metro Transit at the time of his discharge. Not only did the Grievant fail to correct his poor driving record, after repeated warnings, retraining and discipline, but he was given more opportunities to correct his poor driving than required by the established disciplinary policy.

In addition to having a poor driving record the Grievant’s overall record of performance was less than stellar. On one occasion he was observed using his cell phone

while driving. Also, as a result of one incident not involving an accident, the Grievant was discharged but brought back under a Last Chance Agreement.

The Employer had just cause to discharge the Grievant based upon his failure to respond to appropriate warnings, retraining and discipline and fair application of the existing disciplinary policy. Moreover, the Employer would be ignoring its responsibility to the public, if it continued to employ a Bus Operator who was responsible for four accidents within a period of two and one half years.

SUMMARY OF UNION POSITION:

The Grievant is “throwing himself on the mercy of the Arbitrator” and asking for leniency. The accidents that form the basis for this discharge were not particularly serious. One incident involved a broken tail light and the other a scraped vehicle. In the scheme of things the two accidents did not amount to much.

The Arbitrator should also consider the fact that Grievant self-reported the final accident with the knowledge and understanding that his report would likely lead to his discharge. The fact that Grievant self-reported in this situation should mitigate the level of discipline imposed.

Throughout his career the Grievant received positive reports from customers and he went nearly two years without an accident. The last accident was minor in nature and was self-reported.

The Arbitrator should take into consideration the serious impact that this discharge will have upon the Grievant’s life and the relatively minor nature of most of the incidents that resulted in his discharge, and reinstate the Grievant.

OPINION:

The Employer established by a preponderance of the credible evidence that the Grievant violated a well established safety standard of which the Grievant was well aware. The Union did not contest the validity of the Employer's Safety Discipline Guidelines nor did the Union argue that the Grievant was uninformed of the specifics of Safety Discipline Guidelines. The record reflects repeated warnings, counseling, retraining and progressive discipline. There is no evidence that Grievant was treated differently than similarly situated employees under the same or similar circumstances. In fact, the Employer departed from its established disciplinary guidelines when Grievant was not discharged following a fourth accident. Additionally, the Employer discharged the Grievant on a prior occasion but reinstated him under a Last Chance Agreement. The Grievant received leniency from the Employer on two prior occasions.

The Employer followed the four steps in the established Safety Discipline Guidelines, which require discharge after an Employee is found to be responsible for four accidents. All of the accidents were thoroughly reviewed at hearing. Grievant was given both discipline and retraining following the first three incidents. Despite both discipline and retraining the Grievant was responsible for additional accidents. The management of a public mass transit agency must consider its responsibility to the public, when it establishes driving safety standards for its drivers. In this instance, the Grievant's record of driving a bus for Metro Transit fell short of the established level of competence.

The Employer acted in a manner consistent with a safety policy, which was established for the protection of the public customers they serve. The Grievant was forewarned that he would be discharged, if he continued to be responsible for accidents

while driving a Metro Transit Bus. The Grievant was both disciplined and retrained each time he was found to be responsible for an accident and he was given more chances to succeed than available under the policy. Hence, the Employer had just cause to discharge the Grievant and the discharge should be upheld.

AWARD:

The grievance is hereby denied and the discharge upheld.

Dated: June 9, 2006

James A. Lundberg, Arbitrator